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IN THE

Supreme Court of the United States

October Term, 1958

No. 159

SAUL GELB, also known as SOL GORDIN,

Petitioner,

against

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Saul Gelb, your petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above entitled case on June 17, 1959, denying his petition to vacate an illegal and void sentence, pursuant to Title 28, Section 2255.

Opinion Below

The opinion in the court below (Appendix A, *infra*) has not yet been reported.

Jurisdiction

The judgment of the court below was entered on June 17, 1959. The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1254(1).

Questions Presented

1. Can a sentence of a District Court Judge placing the petitioner on Probation be overcome by a sentence of another District Court Judge for a crime committed prior to the probation and not in violation of the probation?

2. The extension of the statute of limitations became *ex post facto* while petitioner was in custody and the government had knowledge of his prior activities?

Statutes Involved

Section 3651, Title 18, U. S. Code.

SUSPENSION OF SENTENCE AND PROBATION.

Probation may be granted, whether the offense is punishable by fine or imprisonment, or both. If an offense is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation as to imprisonment. Probation may be limited to one or more counts or indictments, but, in the absence of express limitation, shall extend to the entire sentence and judgment.

The court may revoke or modify any condition of probation, or may change the period of probation.

The period of probation, together with any extension thereof, shall not exceed five years.

Section 4203, Title 18, U. S. Code.

APPLICATION AND RELEASE; TERMS AND CONDITIONS.

a) If it appears to the Board of Parole from a report by the proper institutional officers or upon application by a prisoner eligible for release on parole, that there is a reasonable probability that such prisoner will live and remain at liberty without violating the laws, and if in the opinion of the Board such release is not incompatible with

the welfare of society, the Board may in its discretion authorize the release of such prisoner on parole.

Such parolee shall be allowed in the discretion of the Board, to return to his home, or to go elsewhere, upon such terms and conditions, including personal reports from such paroled person, as the Board shall prescribe, and to remain, while on parole, in the legal custody and under the control of the Attorney General, until the expiration of the maximum term or terms for which he was sentenced.

Section 3282, Title 18, U. S. Code (prior to amendment of September 1, 1954).

OFFENSES NOT CAPITAL.

Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within three years next after such offense shall have been committed. June 25, 1948, c. 645, 62 Stat. 828.

Section 3282, Title 18, U. S. Code (as amended September 1, 1954).

OFFENSES NOT CAPITAL.

Except as otherwise expressly provided by law, no person shall be prosecuted, tried or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed (or if on such date prosecution therefor is not barred). As amended September 1, 1954, c. 1214 Sec. 10(a), 68 Stat. 1145.

Statement of Facts

The essential facts relevant to the present application are the three indictments to which the appellant Gelb has